



September 18, 2000

Mr. Mark T. Sokolow
City Attorney
City of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77641-1089

OR2000-3597

Dear Mr. Sokolow:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139081.

The City of Port Arthur (the "city") received four requests, one of which was amended, for information relating to the city police department. You inform us that the city will release some of the information that it deems to be responsive to the requests. You claim that other requested information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹ We also received and have reviewed your letter of July 20, 2000, informing us of your release of portions of the information that the city initially sought to withhold in its entirety.²

Section 552.111 excepts from public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. The purpose of section 552.111 is to protect advice, opinion, and recommendation used in the decisional process from public disclosure and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, no writ); Open Records Decision No. 559

¹The city's request for this decision does not address the requests for evaluations of the police chief's job performance, his personnel file, and city budgets reflecting the salaries of certain officials. If the city has not complied with those aspects of these requests for information, then it must do so immediately. *See* Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).

²Please note that chapter 552 of the Government Code does not permit selective disclosure of public information. *See* Gov't Code § 552.007(b). Therefore, any requested information that the city voluntarily has released also must be made available to any person, including the other requestors, who requests access to it.

(1990). In Open Records Decision No. 615 (1993), this office reexamined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ). We concluded that section 552.111 excepts from required public disclosure "only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body[.]" Open Records Decision No. 615 at 5-6. Thus, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. If, however, factual information is so inextricably intertwined with material involving advice, opinion, or recommendation that severance is impractical, factual matter also may be withheld. Open Records Decision No. 313 (1982).

In Open Records Decision No. 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the advice, opinion, and recommendation of the drafter with regard to the form and content of the final document, so as to be excepted from public disclosure under the statutory predecessor to section 552.111. Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *Id.* Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *Id.* In this instance, the city seeks to withhold most of what you characterize as a draft of the Buracker study. You inform this office that the city employed Carroll Buracker & Associates, Inc., a management consulting firm, to prepare a comprehensive analysis of the police department's operations. You assert that the draft report "includes recommendations of a broad scope that the City Manager believes will significantly affect the City's policy mission." You explain that the city manager has reviewed the draft and provided the consultant with comments and additional information. You inform us that the consultant was scheduled to submit his report to the city council on July 25 or within one or two weeks thereafter. You state that the consultant planned to distribute the final version of his report and review it with the council at that time. Based on your representations and our review of the submitted information, we conclude that the portions of the draft of the Buracker study that the city seeks to withhold are excepted from public disclosure under section 552.111 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

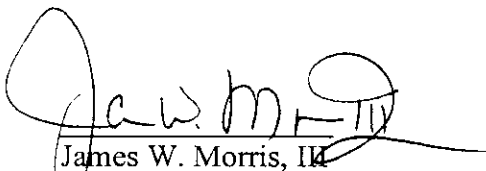
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 139081

Encl. Submitted documents

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